

Message Text

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PAGE 01 STATE 129530
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FM SECSTATE WASHDC
TO AMEMBASSY LONDON IMMEDIATE
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LONDON FOR US CIVAIR DEL

E.O. 11652: N/A

TAGS: EAIR, UK, FR

SUBJECT: CIVAIR - CONCORDE.

1. SECOND CIRCUIT COURT OF APPEALS, WHICH IS CONSIDERING CONCORDE CASE, ISSUED ORDER MAY 25 REQUESTING DEPARTMENTS OF STATE AND TRANSPORTATION TO SUBMIT AMICUS CURIAE BRIEFS ADDRESSED TO WHETHER (A) PORT AUTHORITY POWER TO REFUSE LANDING RIGHTS COULD BE PREEMPTED BY USG, (B) PA POWER WAS IN FACT PREEMPTED IN CASE OF CONCORDE AND (C) PA RESOLUTION BARRING CONCORDE OFFENDS ANY INTERNATIONAL AGREEMENTS. USG REQUESTED AND OBTAINED DELAY UNTIL JUNE 6 TO RESPOND TO COURT'S ORDERS.

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PAGE 02 STATE 129530

2. ON JUNE 6 USG WILL SUBMIT BRIEF WHOSE "INTRODUCTION AND SUMMARY OF ARGUMENTS" READS AS FOLLOWS:

"THE UNITED STATES BELIEVES THAT THE PORT AUTHORITY'S

BAN ON CONCORDE TEST OPERATIONS AT KENNEDY AIRPORT IN NEW YORK CITY IS UNFORTUNATE AND ILL-ADVISED. THE GOVERNMENT'S

POLICY, AS STATED ON SEVERAL OCCASIONS BY BOTH THE PRESIDENT AND THE SECRETARY OF TRANSPORTATION, IS TO SUPPORT THE EARLIER DETERMINATION WHICH AUTHORIZED A

16-MONTH DEMONSTRATION OF THE CONCORDE AT BOTH KENNEDY AND DULLES AIRPORTS. IN REAFFIRMING THE WISDOM OF THIS DEMONSTRATION, IT IS RECOGNIZED THAT THE VERY HEART OF TEMPORARY CONCORDE AUTHORIZATION IS THE REALIZATION OF SUBSTANTIAL BENEFITS WHICH WILL FLOW FROM A FULL TEST OF THIS NEW TECHNOLOGY. THESE BENEFITS INCLUDE, AMONG OTHERS, FURTHER ASSESSMENT OF THE AIRCRAFT'S ENVIRONMENTAL IMPACT, MEASURING NOISE LEVELS DURING ACTUAL COMMERCIAL OPERATIONS, GAINING ADDITIONAL DATA ON SUBJECTIVE COMMUNITY RESPONSE TO THE CONCORDE'S UNIQUE NOISE CHARACTERISTICS AND PARTICIPATION IN THE PROCESS OF DEVELOPING INTERNATIONAL STANDARDS FOR THE PROTECTION OF THE STRATOSPHERE. IN BANNING CONCORDE OPERATIONS AT KENNEDY, THE PORT AUTHORITY HAS DIMINISHED MEASURABLY THE VALUE OF THE DEMONSTRATION. AT THE SAME TIME, THE PORT AUTHORITY'S ACTION HAS ALSO DEPRIVED THE UNITED STATES OF OTHER IMPORTANT BENEFITS, THE MOST SIGNIFICANT BEING THE GOOD WILL OF OUR ALLIES WHICH WOULD FLOW FROM A FAIR TEST OF THE CONCORDE. ON SEVERAL OCCASIONS, PRESIDENT CARTER HAS INDICATED HIS STRONG SUPPORT FOR THE 16-MONTH DEMONSTRATION PERIOD AS THE 'BASIS FOR REAFFIRMING THE CLOSE TIES BETWEEN THE UNITED STATES AND BRITAIN AND FRANCE . . .' FOR THIS REASON, HE HAS STATED THAT 'WHERE THE FEDERAL GOVERNMENT HAS HAD (THE) AUTHORITY, THE TEST FLIGHTS ARE NOW BEING LIMITED OFFICIAL USE

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PAGE 03 STATE 129530

CONDUCTED BY THE CONCORDE AT DULLES, NEAR WASHINGTON.' IN RESPONDING TO PERSONAL MESSAGES FROM THE PRIME MINISTER OF THE UNITED KINGDOM AND THE PRESIDENT OF FRANCE, THE PRESIDENT INDICATED 'THAT HE SHARED THE DESIRE OF THE TWO EUROPEAN LEADERS TO APPROACH THIS MATTER IN A WAY THAT REFLECTS THE CLOSE FRIENDSHIP BETWEEN OUR COUNTRIES.' SUCH GOOD WILL IS ESSENTIAL FOR A HEALTHY INTERNATIONAL AVIATION SYSTEM. THE PERPETUATION OF ORDER IN THE FIELD OF INTERNATIONAL AVIATION RESTS IN LARGE PART UPON THE GOOD FAITH OF THE PARTIES AND UPON THE RECOGNITION THAT SELF INTEREST IS BEST SERVED THROUGH LONG-TERM INTERNATIONAL COOPERATION. FOR MANY YEARS, BOTH THE PORT AUTHORITY AND NEW YORK HAVE ENJOYED A PRE-EMINENT ROLE IN INTERNATIONAL COMMERCE. IT WOULD BE IRONIC AND UNFORTUNATE IF THEY WERE TO SUFFER AND THE COUNTRY AS WELL FROM A DIMINUTION OF INTERNATIONAL GOOD WILL CAUSED BY THEIR REFUSAL TO PARTICIPATE IN THIS TEMPORARY, LIMITED CONCORDE DEMONSTRATION.

"WHEN FORMER SECRETARY OF TRANSPORTATION COLEMAN AUTHORIZED THE 16-MONTH DEMONSTRATION PERIOD, HIS DECISION RECOGNIZED THAT THE CONCORDE WOULD REQUIRE THE NECESSARY AUTHORIZATIONS FROM AIRPORT OPERATORS WHERE SERVICE WAS

PROPOSED. AS WE SHALL DEVELOP IN GREATER DETAIL BELOW, WE BELIEVE THAT UNDER THE EXISTING STATUTORY FRAMEWORK, CONGRESS DID NOT INTEND TO PROVIDE, AND THE EXECUTIVE DID NOT INTEND TO EXERCISE, THE POWER TO PREEMPT AN AIRPORT PROPRIETOR FROM EXCLUDING ANY AIRCRAFT ON THE BASIS OF NOISE CONSIDERATIONS. FURTHER, WE DO NOT BELIEVE THAT IN AUTHORIZING THE CONCORDE DEMONSTRATION AT KENNEDY AIRPORT, THE SECRETARY ACTED IN SUCH A FASHION AS TO PREEMPT THE PORT AUTHORITY FROM ITS TRADITIONAL ROLE AS AIRPORT PROPRIETOR. HOWEVER, WE DO BELIEVE THAT THE PORT AUTHORITY IS OBLIGATED TO LIMITED OFFICIAL USE

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PAGE 04 STATE 129530

CONDUCT ITS PROPRIETARY DETERMINATIONS IN A REASONABLE MANNER AND ONE THAT IS NOT UNFAIR OR DISCRIMINATORY. THERE IS EVIDENCE THAT THIS IS NOT THE CASE. SPECIFICALLY THE PORT AUTHORITY HAS IGNORED ITS OWN RESOLUTION OF MARCH 11, 1976, TO ASSESS AND REPORT IN A TIMELY FASHION UPON CONCORDE NOISE AS THAT DATA BECAME AVAILABLE FROM OPERATIONS ELSEWHERE. ALSO, IT HAS GIVEN NO REASON WHY THE CONCORDE IS NOT ACCEPTABLE UNDER STANDARDS GENERALLY APPLICABLE TO OTHER AIRCRAFT

OPERATING AT KENNEDY. THUS, WE BELIEVE THAT THE PORT AUTHORITY'S PROPRIETARY POWERS MAY HAVE BEEN EXERCISED IN A DISCRIMINATORY FASHION. IN ADDITION WE BELIEVE ITS ACTIONS HAVE BEEN DILATORY, ARBITRARY AND CAPRICIOUS. ACCORDINGLY, IF THE BAN ON CONCORDE FLIGHTS SHOULD BE STRICKEN BY THIS COURT, THE RESULT OF THE OPENING OF KENNEDY AIRPORT TO THE TEST OF THE CONCORDE WOULD BE CONSISTENT WITH THE GOVERNMENT'S POLICY OF CONDUCTING A FAIR TEST AT BOTH KENNEDY AND DULLES AIRPORTS."

3. MAIN PART OF BRIEF PRESENTS LEGAL ARGUMENTS IN SUPPORT OF USG POSITION THAT THERE WAS NO PREEMPTION BUT THAT PA BAN WAS UNREASONABLE. CONCERNING RELATIONSHIP BETWEEN PA BAN AND INTERNATIONAL AGREEMENTS, BRIEF STATES THAT USG PREFERS NOT TO COMMENT IN VIEW OF CURRENT RENEGOTIATION OF US-UK AVIATION AGREEMENT AND POSSIBILITY THAT COMMENT MIGHT HAVE NEGATIVE IMPACT ON THOSE NEGOTIATIONS.

4. NEITHER DEPARTMENT NOR OTHER AGENCIES PLAN TO

ISSUE PRESS STATEMENT OR RESPOND SUBSTANTIALY TO
PRESS INQUIRIES ON BRIEF. OUR REPLY TO INQUIRIES WILL
BE THAT BRIEF SPEAKS FOR ITSELF AND COMMENT WOULD BE
INAPPROPRIATE IN VIEW OF FACT THAT CASE IS PENDING
BEFORE COURT. EMBASSIES SHOULD RESPOND SIMILARLY TO
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PAGE 05 STATE 129530

ANY INQUIRIES. FULL TEXT OF BRIEF BEING POUCHED.

5. BRIEF EXPECTED TO BE FILED EARLY AFTERNOON NY TIME
JUNE 6. DEPARTMENT INFORMED UK AND FRENCH BRIEFS ARGUING
ENTITLEMENT UNDER BILATERAL AGREEMENTS WILL BE FILED
JUNE 6.

VANCE

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